

ORDINANCE NO. 17529-05-2007

AN ORDINANCE AMENDING CHAPTER 30, "STREETS AND SIDEWALKS" OF THE CODE OF THE CITY OF FORT WORTH (1986), AS AMENDED, BY ADDING A NEW ARTICLE, ARTICLE VII, ENTITLED "NEWSRACKS" TO PROVIDE FOR THE REGULATION AND PERMITTING OF NEWSRACKS IN PUBLIC RIGHTS-OF-WAY PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the current City Code of the City of Fort Worth does not provide for the regulation and permitting of newsracks on public rights-of-way; and

WHEREAS, since August of 2004, newsracks in the downtown area of Fort Worth has substantially increased in number from 435 boxes to 691 boxes consisting of over 36 different publications with many located near handicap access ramps, crosswalks, and in front of planters, fire hydrants, garage exits, meters, bus stops, and store front windows resulting in obstructed flow of pedestrian traffic; and

WHEREAS, a committee was formed composed of representatives from the City, Downtown Fort Worth Inc., Sundance Square and other interested parties to discuss possible solutions to the uncontrolled placement and maintenance of newsracks in the downtown area; and

WHEREAS, the committee performed an analysis of the number and location of newsracks in the downtown area in 2004 and again in early 2006, studied other city ordinances, met with local publishers and held a public hearing on proposed changes; and

WHEREAS, the uncontrolled placement and maintenance of newsracks in public rights-of-way presents an inconvenience and danger to the safety and welfare of persons

using such rights-of way; including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services; and

WHEREAS, the City Council recognizes that the streets, sidewalks, and public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and that access to and use of such purposes should not be denied except where such use unreasonably interferes with the use of these areas by pedestrians or vehicular traffic, or where such use presents a hazard to persons or property; and

WHEREAS, the City Council has determined that a reasonable accommodation of these competing interests can be achieved by the adoption of reasonable time, place and manner regulations which are designed to control the placement and maintenance of unmanned newsracks and the distribution and sale of newspapers and other publications; and

WHEREAS, the City Council has determined that it is advisable to adopt regulations to control the placement and maintenance of unmanned newsracks in order to provide for pedestrian and driving safety and convenience, insure the flow of pedestrian or vehicular traffic from any place of business or from the street to the sidewalk, reduce the visual blight on the public rights-of-ways and protect the aesthetics and value of surrounding properties while protecting the right to distribute information protected by the United States and Texas Constitutions through the use of newsracks;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

Chapter 30, of the City Code of the City of Fort Worth, "Streets and Sidewalks", is

amended by adding a new Article, Article VII, “Newsracks”, to provide for the regulation and maintenance of newsracks on sidewalks and other public rights-of-way to read as follows:

ARTICLE VII NEWSRACKS

DIVISION I. PURPOSE

SEC. 30-102. PURPOSE. The purpose this Article is to promote the public health, safety, and general welfare of the citizens and visitors to the downtown area of Fort Worth through the regulation of placement, type, appearance and maintenance of newsracks on public rights of way so as to:

- A.** Provide for pedestrian and driver safety and convenience.
- B.** Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including, but not limited to, ingress into and egress from any residence or place of business, or from the street to the sidewalk, or from the sidewalk to the street by persons exiting or entering parked or standing vehicles.
- C.** Provide for the safety of the general public and property during emergency conditions.
- D.** Provide reasonable access for the use and maintenance of poles, posts, traffic signs and /or signals, hydrants, mailboxes, sidewalks, planters, pavers and access to locations used for public transportation.
- E.** Allow for the placement and maintenance of newsracks in areas, as determined by the City, which afford easy, convenient service to pedestrians, but do not obstruct or interfere with access to abutting properties, and which do not impede or endanger pedestrian, bicycle or vehicular traffic.
- F.** Relocate, replace and/or remove newsracks which result in visual blight and/or are not installed according to this ordinance on the public rights of way or which block or interfere with the aesthetics of store window displays, adjacent businesses, landscaping, street furniture, public or private, and other improvements as well as to allow the removal of abandoned newsracks.
- G.** Maintain and protect the values of surrounding properties, and ensure that the aesthetics and historical attributes of the downtown area and businesses are not compromised by the unregulated placement of newsracks in the public right of way.
- H.** Reduce unnecessary exposure of the public to personal injury or property damage.
- I.** Maintain and preserve freedom of the press to distribute periodicals and newspapers.
- J.** Reduce visual blight and improve the aesthetic appearance of the City’s streets and sidewalks for the merchants, citizens and visitors to the City by coordinating the placement and number of newsracks on public rights of way.

DIVISION II. DEFINITIONS

SEC. 30-103. DEFINITIONS. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned Newsrack means any newsrack which remains empty of the owners' publication or unserviced for:

- (1) Four consecutive days for a daily publication;
- (2) Eight consecutive days for a weekly publication;
- (2) Sixteen consecutive days for a biweekly publication; and
- (3) Thirty four consecutive days for a monthly publication.

Business days are Monday through Friday, excluding any legal holiday observed by the City.

City shall mean the City of Fort Worth, Texas.

City Manager shall mean the Fort Worth City Manager or his designated Assistant City Manager.

Crosswalk shall mean that part of a roadway, whether marked or unmarked, which is included with the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

Department shall mean the City's Department of Planning and Development for permitting purposes and the City's Department of Code Compliance for enforcement purposes.

Director shall mean the Director the Department of Planning and Development or the Director of Code Compliance, as applicable, or their designees.

Distributor shall mean the person responsible for placing and maintaining a newsrack in a public-right of way, parkway, or sidewalk.

Person means any individual, firm, partnership, association, corporation, company organization or legal entity of any kind.

Newsrack means any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution, with or without charge, of newspapers, news periodicals, news publications, printed news material, commercial literature or other publications.

Obscene means material that depicts or describes sexual conduct that is objectionable or offensive to accepted standards of decency which the average person, applying contemporary community standards would find, taken as a whole, appeals to prurient interests; or material which depicts or describes, in a patently offensive way, sexual conduct specifically defined

by applicable state law, and taken as a whole, lacks serious literary, artistic, political or scientific value.

Public right of way means the entirety of any public street area, including the public roadway and adjacent pedestrian ways and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

Parkway means the area between the sidewalk and the curb of any street and where there is not sidewalk, the area between the edges of the roadway the property line adjacent to the roadway. Parkway shall also include any area within a roadway that is not open to vehicular traffic.

Sidewalk means all that area or surface provided for the exclusive use of pedestrians.

Unserviced means any newsracks which does not contain the most current owners publication.

DIVISION III. APPLICABILITY.

SEC. 30-104. APPLICABILITY. The provisions of this Article shall apply to all newsracks, whether installed and maintained prior to or after the effective date of any of the provisions of this ordinance. Any newsrack installed prior to the effective date of this ordinance shall be brought into compliance with the provisions of this Article within thirty (30) days of the effective date of this ordinance. Any newsrack not brought into compliance within thirty days of the effective date of this ordinance shall be deemed to be in violation of this Article.

DIVISION IV. PERMITS

SEC. 30-105. PERMITS.

A. No person shall install, maintain or operate any newsrack which in whole or in part rests upon, on or over any public right of way, parkway or sidewalk or in any other public way or place in the downtown area of the City of Fort Worth as described in Exhibit "A" without first applying for and receiving a permit from the Director.

B. A permit will not be issued unless the application is completed in full, the requested installation meets all the appropriate placement criteria as set forth in this Article and the application is accompanied by the appropriate permit fee for each individual newsrack installation requested. Any permit granted pursuant to the provisions of this Article shall only be valid as to the specific location specified in the permit application. Where application is made for the installation of two or more single newsracks, a separate permit shall be required for each individual newsrack.

C. Upon this ordinance taking effect, any owner of a newsrack currently existing on any City public right of way, parkway or sidewalk or in any other public way within the

downtown area as described in A. above, must apply for a permit within thirty (30) days of the effective date of the ordinance or remove the newsrack from any public right of way, sidewalk, or public property. At the end of the thirty (30) day period, the City shall use the following method to determine which publisher newsracks shall be allowed at a particular permitted location at a block, corner or intersection:

- (1) Priority shall be given to publishers who continuously have distributed newspapers or other publications in newsracks at that location for more than twelve (12) months before the effective date of this ordinance, as indicated by the publisher's affidavit and the City's records;
- (2) Among publishers who have priority under this subsection, newsrack locations shall be allocated first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between two (2) and four (4) days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently;
- (3) If there are more allocated spots than publishers with priority under this section, then the City shall allocate the remaining locations among publishers who do not have priority, first to newspapers and other publications issued at least five (5) days per week, second to newspapers and other publications issued between two (2) and four (4) days per week, third to newspapers and other publications issued once a week, and fourth to newspapers and other publications issued less frequently;
- (4) Notwithstanding the requirements of this subsection, no newspaper or other publication may receive a third space at an intersection until all other interested publishers have had the opportunity to have their newspaper or other publication allocated to that intersection;
- (5) Whenever a permitted location at a corner, block or intersection becomes available, the location shall be allocated in the manner described in this subsection;
- (6) In the event two (2) or more publishers have equal priority under this subsection, then allocation shall be by a content neutral lottery or other random method;
- (7) Once the initial process as described above has been fully implemented, all subsequent newsrack permits shall be issued on a first come first served basis for any unfilled locations. Applications for any unfilled locations will be accepted as submitted and received by the Department.

At the conclusion of the above process and the issuance of permits, any newsrack which is not the subject of a valid permit application will be deemed to be in violation of the Article and subject to removal from the right-of-way as set forth in this Article.

D. The application for a newsrack permit shall be in writing and on a form approved by the Director, signed by the applicant and shall include the following information:

- (1) The name, mailing address and telephone number of the person or organization requesting a permit and responsible for the newsrack.
- (2) The name, address and telephone number of a responsible person whom the City may contact or notify at any time concerning the applicant's newsrack.
- (3) The specified number of newsracks and the detailed proposed location for each one, shown on a drawing of the area described in A above or GIS/address based program provided by the applicant which is compatible with the City's GIS program and which indicated all existing buildings, existing newsracks at the location(s) and general vicinity, and all other possible obstructions within 20 feet of the proposed location(s) of the newsrack, and the proposed specific locations of the newsracks.
- (4) The name of the newspaper(s) or periodical(s) to be placed in the each newsrack.
- (5) Type or brand of newsrack, including an illustration and description of the newsstand and mount and whether the newsrack will have a coin-box attachment or equivalent.
- (6) A sworn statement under penalty of perjury executed by an officer, director or authorized agent of the applicant that the applicant shall not sell, assign, or transfer by any method, the permit for the newsrack location to any other publisher, distributor, entity or individual person.
- (7) Language whereby the applicant agrees to indemnify and hold harmless the City, its officers, directors and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the installation, use or maintenance of a newsrack within the City of Fort Worth.
- (8) An administrative fee.
- (9) Other information as requested by the Director.

E. Permits shall be issued for the installation of a newsrack without prior inspection of the location(s), but the Director, or his designee, shall have final approval of the location(s). The Director shall review the application and issue a permit within four (4) business days to a person or organization whose application meets the requirements of this section.

F. The permit sticker, containing the distributor's permit number, name, address, and working telephone number must be affixed and displayed on the front of each newsrack in a conspicuous location. If such location is not practicable, the permit sticker shall be located in a location approved by the Director.

G. Initial Permits shall be valid for a period of one (1) year and shall be renewable pursuant to the requirements of this Article.

H. Expiration – Renewal. Unless earlier revoked, newsrack permits issued pursuant to

the provisions of this Article shall expire on the 30th day of August of the 2nd year after the permit is issued. Thereafter, the permits shall be renewed every two years upon the payment of a new permit fee. Applications for renewal shall be made at least 30 days prior to the expiration of any permit issued and must be accompanied by a permit renewal fee. Application for permit renewal and payment must be either presented in person to the Department of Planning and Development, via internet (if available), or mailed via certified mail, postmarked no later than thirty (30) days prior to the date of permit expiration. Failure to renew an existing newsrack permit before its expiration will require the payment of a late renewal penalty or the loss of placement of said rack at the subject location.

I. New Development. If a new building or development occurs adjacent to or near a permitted location that causes the permitted location or permitted newsrack to no longer meet the requirements of this ordinance, the City shall, after notification to the permittee, move the permitted newsrack to the nearest permitted and available location that meets the requirements of the ordinance.

J. Insurance. As a condition of the City granting an person or persons one or more permits to maintain a newsrack or newsracks in the public right of way, any such permittee shall be required to maintain a policy of general liability insurance in an amount acceptable to the City, naming the City of Fort Worth and its employees, agents etc. as "Additional Insureds" for the specific purpose of indemnifying and holding harmless the City of Fort Worth, its officers, boards, employees, etc. from and against any and all losses, costs, damages ,expenses or liability, whatsoever, which may result form or arise out of the granting of a permit, and/or the installation and/or the maintenance of an newsrack or newsracks for which the permittee shall be responsible for paying any and all such losses or damages that may be sustained by any person or persons as a result of, or which may be caused by or arise out of the installation and/or maintenance of the permitted newsrack or newsracks. The policy of insurance shall be maintained in its original amount by the permittee at the permittee's expense at all times during the period for which the permittee holds a valid permit or permits.

DIVISION V. PROHIBITED LOCATIONS

SEC. 30 -106. NEWSRACKS PROHIBITED.

A. No person shall install or maintain any newsrack which projects onto, into or over any part the roadway of any public street, right of way, sidewalk, or which rests, in whole or in part, upon any portion of any street, or other right-of-way on which motor vehicles are lawfully permitted.

B. No newsrack shall be chained, bolted or otherwise secured to another newsrack, fire hydrants, call boxes, sprinkler inlets, public signs, handrails, planters, benches, trees, light poles or attached to any fixture located in any public right-of-way, or sidewalk.

C. Unlawful Obstructions. No person shall install, use or maintain any newsrack:

- a. Within five (5) feet of any curb return of any unmarked crosswalk;
- b. Within five (5) feet of any marked crosswalk;
- c. Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility;
- d. Within five (5) feet of any designated handicapped parking or handicapped access ramp;
- e. Within five (5) feet of any bus bench;
- f. Within five (5) feet ahead and fifteen (15) feet to the rear of any sign marking a designated bus stop. No newsrack will be installed within the marked bus zone;
- g. In front of an entrance to a business, including the curb area directly across from such entrance where the distance between the entry door, including any recessed area in front of the entry door, and the newsrack is less than ten (10) feet;
- h. In any location used, marked or posted for public utility purpose, public transportation purpose or government use;
- i. Within or in any location where such newsracks leaves less than five (5) feet of clear space for pedestrian traffic or handicap accessibility.;
- j. Within two (2) feet of poles, posts, traffic signs or signals, mailboxes or other objects legally permitted;
- k. Within five (5) feet of any area improved with lawn, flowers, shrubs, trees, street tree wells, landscape planters, or other landscaping. No newsrack shall be located on any tree grate;
- l. Within five (5) feet of any driveway or driveway apron;
- m. Within five (5) feet of any outdoor dining areas or patio dining areas;
- n. Within four (4) feet of any display window of any window abutting the sidewalk or parkway or in such manner as to impede or interfere with the reasonable use of such window for display purposes;
- o. Where placement blocks access to historic markers, benches, trashcans, bike racks, street furniture or other permanent improvements;
- p. Where placement impedes the flow of pedestrian traffic by reducing area free of obstructions (the clear space) to less than six (6) feet or, impeded access to or the use of abutting property, including but not limited to, residences and places of business;
- q. Within twenty (20) feet for both sides of visual public art work or architectural details of buildings, including, but not limited to, murals, sculptures, and fountains;
- r. Within four (4) feet to the front and ten (10) feet to the rear of any parking meter and where there are not parking meters on the curb, within thirty (30) inches from any marked parallel parking space;
- s. If the newsrack is placed near a curb, the newsrack shall be situated near the curb with the back of the newsrack situated not less than 18 inches from the edge of the curb;
- t. In order to provide for the flow of pedestrian traffic, placement of newsracks must provide for a 10 foot minimum passageway for a 20 foot or greater sidewalk; 8

feet minimum passageway for sidewalks measuring between 16 and 20 feet in width; and a 5 feet minimum passageway in width for sidewalks that are less than 16 feet in width.

Notwithstanding any other paragraph of this subdivision, no person shall install, use or maintain any newsrack where placement endangers the safety of persons or property.

DIVISION VII. LOCATION, PLACEMENT, AND NUMBER

SEC. 30-107. LOCATION, PLACEMENT, AND NUMBER.

A. If the newsrack is placed adjacent to the wall of the building, the back of the newsrack shall be situated parallel to and not more than 6 inches from such wall. This section shall not preclude newsracks from being located on opposite corners of a street at an intersection.

B. No more than four newsracks shall be placed immediately adjacent to each other. No more than four (4) newsracks shall be permitted on any street corner or more than sixteen newsracks on any four corners of an intersection or more than eight (8) newsracks on a blockface, including the newsracks located on the corner.

C. No publication may have more than two (2) newsracks at any intersection. No more than two permits for installation of a newsrack shall be issued for each publication at an intersection or more than one permit for each group of 4 newsracks on a corner. No more than one permit shall be issued for each publication on one side of a block or within 200 feet of the same block face, whichever is less. A publication includes differing geographic editions of the same publication and daily and Sunday editions of the same publication. In cases where the block face is longer than 200 feet and there is space to legally install additional newsracks, then a permit for one publication to install a second newsrack on the same block face may be issued by the Director.

E. No newsracks shall be separated by a space of more than twelve (12) inches from any other individual newsrack. No group of newsrack shall extend for a distance of more than eight (8) feet and a space of not less than three (3) feet shall separate each group of newsracks.

F. No more than one group of newsracks shall be allowed per 100 feet of block face, which shall include locations at or near the corner of the block face. No groups of newsracks shall be allowed less than 50 feet from another group of newsracks.

DIVISION VIII. LETTERING, SIGNS AND LOGOS

SEC. 30-108. LETTERING, SIGNS AND LOGOS

A. No newsrack shall be used for advertising signs or publicity purposes. External lettering is restricted to the external lettering and logos replicating the publication style and color of the permitted publication in the subject newsrack. Other than as permitted in this section, no other lettering or advertising of any kind shall be permitted anywhere else on the newsrack, including the mount.

B. Display of Obscene Material. No person shall knowingly place or maintain any publication or material in newsracks, which exposes to public view from the street or sidewalk any statements, words, pictures or illustrations that are obscene.

DIVISION IX. STANDARDS FOR MAINTENANCE AND INSTALLATION

SEC. 30-109. STANDARDS FOR MAINTENANCE AND INSTALLATION

A. Every newsrack shall be maintained in a neat and clean condition and be in good repair at all times. Upon the removal of any newsrack, the applicant shall be responsible for the repair of any resulting condition. Such work will be done to the specification and prior approval of the Department of Code Compliance.

B. Each newsrack which rests, pursuant to the standards set forth in this ordinance, in whole or in part on any public sidewalk, parkway or right-of-way shall comply with the following standards:

- a. No newsrack shall exceed five (5) feet in height, thirty (30) inches in width, or two (2) feet in thickness.
- b. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the periodical sold.
- c. Unless offering free publications, each newsrack shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event the person is unable to receive the paid for publication. The coin-return shall be maintained in good working order.
- d. Each newsrack shall weigh a minimum of 75 pounds
- e. Each newsrack shall be maintained by its distributor and/or the permit holder, in good appearance, in working order with no broken or unduly misshapen structural parts and shall be reasonably free of:
 - i. Dirt and grease,
 - ii. Chipped, faded, peeling and cracked paint in the visible painted areas;
 - iii. Rust and corrosion in the visible unpainted metal areas; or
 - iv. Unbroken, cracked, dented, blemished or discolored plastic or glass.

C. The newsrack permittee shall maintain all newsracks and the sidewalk surface

immediately under and adjacent (within 2 feet) to the newsracks in a safe, clean, attractive and sanitary condition and in good order and repair, as determined by the Department. The permittee shall make routine inspection and maintenance calls on each newsrack and such inspections and maintenance calls may be incorporated with delivery of newspapers or other publications. The permittee shall clean, wash and remove all graffiti, stickers, posters, litter, dust, dirt and weeds at each newsrack. The newsrack shall be maintained in a continual good and working condition. Permittee shall respond to a request to secure a site or to perform maintenance within 24 hours of notification.

D. Repair and Replacement - The Permittee shall commence necessary repairs within one week when any damage or vandalism is found by or reported to the City. If the newsrack damage or vandalism is of an emergency or hazardous nature, the permittee will repair, replace, remove or secure the site within 24 hours of notification. If the newsrack is totally destroyed because of an accident, the Permittee will remove the newsrack and appurtenant structures within 24 hours, including repair of any damage to the public right-of-way, returning the site to its former condition prior to the newsrack installation. Permittee will upon notification by the City, or upon inspection, remove graffiti within 24 hours from any newsrack.

DIVISION X.

SEIZURE, REMOVAL OF NEWSRACKS IN VIOLATION, RIGHT TO HEARING.

SEC. 30-109. SEIZURE, REMOVAL OF NEWSRACKS IN VIOLATION, RIGHT TO HEARING.

1. Upon a determination by the Director that a newsrack has been installed, used or maintained in violation of the provisions of this Article, the Director shall attached a notice tag to the newsrack specifying the date and nature of the violation, and shall E-mail or fax to the Permittee a copy of the violation describing the offense and the date the newsrack was tagged for the violation. If no E-mail or fax address is available, notice to the Permittee shall be in writing, sent by first class mail, return receipt requested, to the address indicated on the permit application. Every notice shall indicate the name and address of the city employee to contact to contest the violation and/or seizure of the newsrack and language explaining the right of the Permittee to appeal. Permittee shall have ten (10) business days from the date on which the tag was attached, notice was E-mailed, faxed or mailing date to either correct the violation or request a hearing pursuant to this Section.

2. A newsrack may be tagged for any violation of any requirement of this Article, including but not limited to the following:

- a. Where its installation, use or maintenance interferes with the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects legally permitted;
- b. When such newsrack does not have a name, address and telephone number affixed in a place where such information may be easily seen and the designee of such newsrack cannot be otherwise identified;

- c. When a newsrack is found in the public right-of-way which does not have a visible city issued decal present indicating the correct permit number of the newsrack or the newsrack has no valid permit at all; and
 - d. When a newsrack is found in the public right-of-way which is not maintained in a neat and clean condition and in good repair, in accordance with this Article.
- 3. If a hearing is requested, City staff will not remove the non compliant newsrack until a final determination by the City Manager. However, if a newsrack installed within the City right-of-way has no visible evidence that it has been properly permitted (no City issued decal, no visible contact information for the owner or no other evidence that would indicate that a valid permit for the newsrack had been issued) City staff may confiscate the offending newsrack and follow the procedures in this Section below. There is hereby created a presumption that any newsrack within the City's right-of-way that does not have a city decal, or visible identification and contact information for the owner of the newsrack, has been installed without a valid permit.
- 4. The Department may seize and remove a newsrack which remains in violation of this Section:
 - a. Ten (10) business days after the E-mail, fax or mailing date of the notice if the Permittee fails to correct the violation or file an appeal; or
 - b. Ten (10) business days after the E-mail, fax or mailing date of the written decision on appeal upholding the Director's determination that the newsrack is in violation of this Section.
- 5. Impoundment.
 - A. Notwithstanding the Director's right to tag newsracks in violation of this Article, the Director may impound any newsrack:
 - (1) When the newsrack poses an immediate danger to persons or vehicles;
 - (2) Where its installation, use or maintenance endangers the safety of persons or property;
 - (3) When pursuant to Subsections 2 and 4 above, a tag has been attached to a newsrack and a written notice, such as fax, letter or E-mail has been sent to the owner, operator, or responsible person for the newsrack
 - (4) When a hearing and appeal, if filed, have resulted in a final determination that the violation(s) specified on the tag attached to such newsrack has in fact occurred, and the designee has failed to correct such violation(s) within ten (10) business days from the date of said determination;

- (5) When a request for a hearing or appeal has been withdrawn. Such request shall be deemed withdrawn, either by actual withdrawal or by the failure of the designee to fully comply with this Article;
- (6) When such newsrack has been abandoned; and
- (7) When such newsrack has been installed on the City's right-of-way without first applying for and receiving a permit as required by this code.

B. Impoundment Procedures.

1. Within forty-eight (48) hours after removal of any newsrack, the City shall notify the owner in writing, fax or E-mail of the removal and the reason for removal where ownership information is posted on the newsrack either through the City decal or the required owner contact information. If ownership information is not readily available because there is no City decal, or ownership identification information posted on the newsrack, or no newspaper or periodical in the newsrack with contact information, the City shall make every reasonable effort to comply with the notification. When notification is possible, the notice shall also inform the owner of the right to request, either in writing or in person, within ten (10) business days of the date of the postmark of such written notice, a hearing by the City Manager or his designee to determine whether such removal was proper.

2. If a newsrack is installed or maintained in such a place or manner as to impose an immediate and serious danger to persons or property, the Director will first make a reasonable attempt to contact the distributor of the newsrack and request immediate relocation or removal. If the distributor or his representative is unable to be contacted or does not respond to appropriate notification, the Director may seize the newsrack pursuant to this subsection only if it is impractical for the City to remedy the violation by moving the newsrack to another location on the street, sidewalk, or other right-of-way without mechanical assistance. If the newsrack is seized pursuant to this section, the Director shall notify the distributor and the permittee of the seizure in writing by first class mail to the address indicated on the permit application.

3. Seized newsracks shall be retained by the City for a period of at least 30 days following the seizure. An impound fee to cover the city's cost and expense of impounding shall be assessed against each publication vending box seized and removed. The distributor or representative may recover the newsrack at any time while in the city's possession upon payment of the impound fee.

4. Return of Impounded Newsracks. Any newsrack, together with its contents, which has been impounded pursuant to this Section, shall be returned to the permittee:

- (1) Upon receipt of an impound fee as determined herein; or

(2) Upon a determination after hearing by the City Manager, or his designee that the newsrack should not have been impounded and should be returned to the permittee.

5. In the event a hearing has not been requested within the time permitted following the impoundment of any newsrack, an impound fee shall be imposed upon the permittee and shall be paid before the impounded newsrack is returned.

6. The fees herein shall be determined and adopted by the City by ordinance in order to collect sufficient money to defer the complete cost of the City's newsrack permitting and enforcement program as set forth in this code. The fees shall be adjusted from time to time by the City to reflect any change in the cost of permitting and enforcement. At no time shall the fees adopted by the City recover more than the actual cost of the program.

C. Sale or Disposal after Impoundment.

The Department may sell or otherwise dispose of any newsrack, together with its contents, and retain the proceeds, pursuant to Texas law, from any such sale or other disposition, and any monies contained in said newsrack at the time of its impoundment, provided that either:

(1) No hearing has been requested within the time permitted; or

(2) A hearing and an appeal, if filed, have resulted in a final determination that said newsrack was properly impounded, and fees assessed have not been received within thirty (30) days from the date of the final determination.

6. Appeals.

1. Request for Hearing. Any newsrack permittee may file a written request with the Department for a hearing, in person or by certified mail, for the purpose of demonstrating that a newsrack should not have been impounded, or that a violation as specified on the tag attached to a newsrack has not in fact occurred.

2. An appeal must be perfected within ten (10) business days after the mailing date of the notice by filing with the Office of the City Manager a letter of appeal briefly stating therein the basis of such appeal. Any action by the City with respect to the alleged violation shall be stayed pending the City Manager's decision, except pursuant to subsections 5.A.1 and 2.

3. Notice of Hearing. Within two (2) working days from the date on which the request for hearing is received, the Department shall set a hearing date and shall notify the designee by certified mail of the date, time and place of said hearing. Said hearing shall occur within ten (10) working days of the date of mailing the notice unless the person requesting the hearing wishes to have the hearing at a later date, and both parties agree on the date. The City Manager may designate an assistant city manager to hear any appeal.

4. Conduct of Hearing. At the time set for such hearing, or at the date to which such

hearing is continued, the City Manager or his designee shall receive all evidence relevant to the occurrence or non-occurrence of the specified violation(s), the compliance or noncompliance with any of the provisions of this Subsection, and any other relevant information. The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses, but the City Manager shall give the parties a reasonable opportunity to be heard and oral and written evidence may be presented by either the distributor and /or representative or the City to show cause why the determination of the Director should be overturned or upheld.

5. Decision after Hearing. The City Manager shall give oral notice of the decision immediately after the hearing and written notice of the decision within five (5) business days after the hearing. The decision of the City Manager or his designee shall be in writing and shall contain findings of fact, a determination of the issues presented, and the amount of the fee, if any, to be imposed. The determination of the City Manager shall be final, but may be appealed to a court of competent jurisdiction.

SECTION 2

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to

comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of Fort Worth which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by V.T.C.A. Local Government Code Subsection 52.013.

SECTION 7.

This ordinance shall take effect on September 1, 2007 after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY

By: 
Assistant City Attorney

ADOPTED: 5-1-07

EFFECTIVE: 9-1-07

EXHIBIT "A"



City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 5/1/2007 - Ordinance No. 17529-05-2007

CONTINUED FROM A PREVIOUS WEEK

DATE: Tuesday, April 10, 2007

LOG NAME: 12NEWSRACKS

REFERENCE NO.: G-15677

SUBJECT:

Adoption of Ordinance Amending Chapter 30, "Streets and Sidewalks" of the City Code to Provide for the Regulation and Permitting of Newsracks in the Downtown Area

RECOMMENDATION:

It is recommended that the City Council hold a public hearing and adopt the attached ordinance amending Chapter 30, "Streets and Sidewalks" to provide for the regulation and permitting of newsracks in the downtown area.

DISCUSSION:

The attached proposed ordinance regulates the location, installation, number and maintenance of newsracks located on City sidewalks. The goals are to protect and enhance the visual impact of the downtown area due to the dependence of tourism and convention trade to the City's economic vitality and to control the proliferation in the number of newsracks to avoid visual clutter and assure the safe, convenient circulation and unobstructed flow of pedestrian traffic on City sidewalks.

With the assistance of Downtown Fort Worth, Inc., an extensive study was conducted on the location, design, and number of newsracks in the downtown area. An analysis was performed on the number of newsracks creating obstruction of flow of pedestrian traffic and circulation on streets and sidewalks, including newsracks located near fire hydrants, sidewalk dining, planters, valet parking, narrow sidewalks, ramps, garage exits, and meters. The study also noted the number of abandoned, rusted and unused newsracks.

Permits and insurance are required and the allowed number of newsracks on each block face will be determined based on distances from curbs, handicapped parking, bus stops, driveways, planters, outdoor dining and other improvements where placement of the newsrack would hinder the safe movement of pedestrian traffic. Priority of specified newsrack locations shall be given to publishers who have continuously distributed newspapers or other publications at that location for more than twelve months before the effective date of the ordinance.

All newsracks would be subject to maintenance, weight and installation requirements and to impoundment for failure to be permitted or meet the requirements of the ordinance.

If adopted by the City Council, the Transportation and Public Works Department will administer and enforce the regulations.

FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that this action will have no material affect on City funds.

TO Fund/Account/Centers**FROM Fund/Account/Centers**

Submitted for City Manager's Office by:

Marc Ott (6122)

Originating Department Head:

David Yett (7623)

Additional Information Contact:Sarah Fullenwider (7619)
